5.7. 2007 Present : Mr.Sandeep Sharma, Asstt.Solicitor General,
for the appellants.

CMP(M) No.169 of 2007:

For the reasons stated in the application the delay in filing the appeal is condoned.

LPA No.28 of 2007:

This appeal is directed against the judgment of the learned Single Judge of this Court passed in CWP No.854 of 2001 whereby he has directed that the husband of respondent No.1 should not be treated as deserter and pension be paid to her.

Subhash Chand husband of respondent was enrolled as a Sepoy/Washerman in the Indian Army. He was on annual leave from 7.1.1995 to 7.3.1995. According to the appellants, Subhash Chand failed to join service on expiry of the annual leave. A Court of Inquiry was constituted. In this Court of Inquiry statements of the witnesses were recorded. All the witnesses basically stated that Subhash Chand has not joined duty after annual leave. He was thereafter declared a deserter. On the ground that Subhash Chand was a deserter the claim of the respondent for pension and compassionate appointment was rejected.

The learned Single Judge came to the conclusion that in fact the father of Subhash Chand had also complained to the authorities including the Governor of Jammu and Kashmir that his son had left his native village to join service on expiry of the annual leave. A report in this regard was also lodged with the Police Station, Nadaun that Subhash Chand was missing and not traceable. Admittedly even

the Unit of Subhash Chand sent various communications to the Superintendent of Police, Hamirpur in this regard. The learned Single Judge has come to the conclusion that though Subhash Chand may not have joined service after completion of his annual leave but it cannot be said that he is a deserter. None including the friends and family members of Subhash Chand have heard about his whereabouts. There is nothing to show that Subhash Chand intended to desert the Army. On these grounds the learned Single Judge has come to the conclusion that the conclusion of the Court of Inquiry that Subhash Chand is a deserter cannot be accepted. We find no error in the judgment of the learned Single Judge which is based on law and facts. The Letters Patent Appeal is consequently dismissed in limine.

In view of the dismissal of the main appeal, the CMP No.439 of 2007 is also dismissed.

(Deepak Gupta),
A.C.J.

July 5, 2007 **(V.K. Ahuja)**
PV **Judge.**